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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Access Charge Reform
CC Docket No. 96-262

Reply Comments of CPT on Access Fee Reform

February 14, 1997

Summary

In these comments, CPT expresses:

(1) opposition to elimination of the Enhanced Services Provider (ESP) exemption for Internet Services Providers (ISP)s,

(2) support for the elimination of the Carrier Common Line (CCL) imposed on long distance providers, and

(3) support for the adoption of access fee systems which will permit innovation in pricing for both voice and data services, including affordable home 24x7 data connections.

Introduction

The Consumer Project on Technology is a non-profit organization that represents consumer's interests in a wide range of technology related issues. Our home page on the Internet is http://www.essential.org/cpt. We have commented on the issues raised in this rulemaking several times. On June 14, 1995, CPT filed comments in the ISDN End User Common Line Charges proceeding (CC docket No. 95-72). We urged the commission to move away from the per-minute CCL charges in favor of the flat rate approach of the Subscriber Line Charge. On the issue of charges for derived channels, CPT indicated that it was reasonable for the Commission to impose somewhat higher charges for higher bandwidth connections, but also that access fees

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should not create barriers to the deployment of higher bandwidth services. Commission policies should be forward-looking, and encourage higher bandwidth connections for the residential market. We also asked the Commission for an inquiry into excessive LEC charges for ISDN and other digital services. (http://www.essential.org/cpt/isdn/cpt-fcc.html).

On May 8, 1996, CPT urged the Commission to reject the ACTA petition relating to Internet telephony, and urged the Commission to move away from the CCL charge as a method of funding the consumer's local loop. CPT also urged the Commission to adopt policies which would encourage deployment of data services to the residential market. (http://www.essential.org/cpt/telecom/acta.txt)

In the Universal Services docket, (CC Docket No. 96-45), CPT filed comments on April 12, 1996 recommending the elimination of the per-minute CCL, and the reexamination of all usage-based access charges for long distance service. CPT urged the commission to consider alternative methods of funding long distance access charges, including the flat rate SLC, or charged paid by the long distance company, based upon a flat rate per line, or variable fees based upon revenue or value added, rather than the fixed per-minute charges. (http://www.essential.org/cpt/telecom/us.txt).

On January 23, 1997, in the FCC's Forum on Bandwidth, CPT provided testimony which criticized LEC assertions that Internet usage was causing current congestion of the Public Switched Telephone Network (PSTN). CPT again objected to excessive prices for residential ISDN services, asked the Commission to create incentives for LECs to obtain higher penetration of residential digital connections. CPT also asked the Commission to be wary of LEC proposals to single out ISPs for new fees, at the same time that LECs are active as competitors in the ISP market (http://www.essential.org/cpt/isdn/bandwidth.html). Many of the points were addressed in our January 29, 1997 comments in this proceeding (http://www.essential.org/cpt/telecom/jan29.html).

The Enhanced Service Provider Exemption is Needed to Protect ISPs from Anticompetitive Practices by LECs

The Commission's Enhanced Services (ESP) exemption has been a big success. The data and computer industries have flourished in a highly competitive marketplace. We see far more innovation and cost saving in the competitive computer and information industry than we do for the monopoly LEC services. As Internet usage has increased, LEC revenues and profits have soared, due to increased demand for new telecommunications services.

The LECs have fought efforts to increase the utility of the Internet to residential consumers by deliberately holding back deployment of residential ISDN service. ISDN is a mature technology long deployed to serve business voice users, and it is the only technology that can solve last-mile bandwidth data problems for most residential consumers over the next five or more years. LECs are are asking state regulators to impose huge usage charges on ISDN services.

LECs are also seeking termination charges on POTS calls to ISPs in several states, and LECs are fighting efforts by regulators to open up their networks so that new entrants can provide new faster bandwidth services over the LEC controlled local loop.

Meanwhile, LECs are active competitors against ISPs. In some cases, LECs engage in the most obvious and clear cut methods of predatory pricing, and it is amazing that the Commission and the Department of Justice (DOJ) haven't acted to protect the ISP competitors from the LEC monopolies. For example, in California, PacBell was recently offering five months of free PacBell Internet service for consumers who purchased second POTS lines from PacBell. This is a textbook example of the types of predatory behavior that the original AT&T consent order sought to prevent by limiting LEC entry into competitive services. The failure of the Commission or DOJ to act in this matter is disturbing, and sends the wrong signal to the LECs as they use their monopoly base to enter new deregulated markets.

If the LECs are permitted to impose access fees on ISPs which exceed costs, such as the CCL, it will provide the LECs which an opportunity to compete unfairly against non-affiliated ISPs. If a LEC owned ISP pays access fees to the LEC, it is simply moving money from one pocket to another. For non-affiliating ISPs, however, the access fees are real costs. The independent ISPs are very concerned about unfair competition from the LECs. We believe these fears are well grounded.

The CCL

The carrier common line (CCL) charge is a deliberate subsidy mechanism which is designed to lower the costs of having (but not necessarily using) a telephone installed in the home. Consumers indirectly pay the local exchange carrier between 5 and 6 cents per minute for the privilege of making a long distance telephone call. The CCL charges have historically been far higher than the traffic sensitive costs of connection to the long distance company. They were defended by some on the grounds that the high usage charges would permit lower non-traffic sensitive monthly fees, which benefit some consumers who would not be able to afford the fixed monthly costs of having a telephone in the home.

This policy has failed. Consumers pay low monthly charges to have a telephone in the home, but they pay too much to use the telephone. The CCL and related usage based access fees have locked the long distance market into inefficient pricing models. The CCL is a fixed per-minute charge, that is insensitive to times of day or network costs. A call at 2 am incurs the same costs as a call at 4 pm, near the calling peak. The long distance carriers have enormous surplus capacity, but they cannot offer calling plans that feature free or deeply discounted off-peak calling, because of the inflexible structure of the CCL charges. This has placed a particularly heavy burden on low income persons, who are more willing to shift calls to off-peak hours.

In areas where competition is sufficient, cellular operators now offer deep discounts or even free calling in off-peak hours. In the competitive market for Internet service, ISPs often offer flat rate options. Consumers have shown strong preferences for flat rate plans. Many low income consumers would benefit from flat rate plans, in part because it makes it easier to predict the costs of the monthly bill, and in part because some low income households cannot effectively control access to their telephones. We believe that if the Commission eliminates the CCL, competition in the long distance telephone market will lead to some flat-rate or free off peak options, and other innovations that will benefit consumers.

Network Cost Structures and Economic Efficiency

The telephone network involves very high fixed costs. Policies which permit increased usage during off-peak hours are desirable, because existing network resources can be used more intensively at no additional cost. Investments in peak capacity are also often desirable, if the costs of adding peak capacity is small, relative to the non-traffic sensitive (NTS) network costs, and/or if the benefits from increases peak capacity are high.

The LECs frequently campaign for usage based pricing models, as though there are self evident advantages of usage based pricing for the PSTN. This is clearly not true. The cost of the local loop, marketing, billing, government relations and many other LEC costs are not sensitive to usage. The CCL seeks to recover a portion of the NTS costs through traffic-sensitive (TS) charges. The suppression of usage, because of excessive usage charges, is itself a source of inefficiency. Moreover, the high usage charges lead to exactly the type of underutilization of the network that economic theory predicts from a monopoly. The LECs are monopolies. Regulators should adopt policies which work to expand output from the monopoly LECs.

Economic Incentives to Re-engineer the Network for Data

The Commission has indicated that it is seeking policies to enhance the development of residential services that are better suited for data transmissions. The LECs are seeking usage-based charges on POTS and ISDN calls from residential users, and usage-based charges for the unbundled local loop. It is CPT's view that such charges undermine the LECs incentives to deploy technologies that solve congestion problems. Collecting usage fees through the circuit switched network then becomes highly profitable, and technologies which eliminate the rationale for those charges would threaten this profit center. These are the wrong incentives.

If the LECs are facing growing demand for data services with flat-rate pricing structures, they will have greater incentives to find economical ways of addressing growing data traffic. Necessity becomes the mother of invention. As the Commission is aware, Nortel, Lucent, and other firms are now manufacturing devices which permit the LECs to remove data calls to ISPs from the circuit switched network, and to transport the calls to the ISP using packet switched technologies. The LECs also have other existing technologies to more efficiently terminate calls with ISPs.

The Commission and state regulators have been asked by the LECs to place usage charges on POTS calls that are terminated at the ISP, as an incentive for the ISP to purchase the new packet switched services. We propose an alternative. Leave the pricing of legacy POTS services as is, and require the LECs to eliminate the costly usage charges on higher bandwidth residential digital services like ISDN, if the call is terminated using the new packet switched service. This gives the

ISP an incentive to order the higher cost service, since the ISP customers can then purchase an affordable flat rate digital connection.

If the flat rate POTS calls to ISPs continue to increase, then the LECs will have an even greater incentive to move customers from POTS to the digital, packet switched alternatives.

On the other hand, if the LECs can get new usage based fees imposed on ISPs for POTS call termination, it is difficult to see why the LECs would have incentives to move toward affordable non-usage based packet switched technologies.

Residential 24x7 connections.

Ultimately, the Commissions has to adopt policies that will make 24x7 data connections to the home feasible and affordable. This cannot happen if the connection is terminated at a server that is paying per minute charges, or if the local loop itself is leased with traffic sensitive charges, as is required under some state laws.

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Sincerely

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